IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 21691 of 1994

Between:

Ch.Rama Devi, D/o. Janardhan,
A.P. Residential School for Girls, Parkal ,
Warangal Dist.

..... PETITIONER

AND

1 The A.P.Schooll Welfare Residential Institutions Society,
Regd.No.245386, Telugu Samkshema Bhavan , Masab Tank,
Hyderabad.
2 The Govt., of A.P., rep. by it's Secretary,
Social Welfare Department, Secretariat,
Hyderabad.
3 The Principal, A.P. Residential School for Girls,
Parkal, Warangal Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction and more particularly one in the nature of Writ of Mandamus directing the respondents to regularize the service of the petitioner and further directing the respondents to continue the petitioner in the respective school.

Counsel for the Petitioner: MR.J.SIDDAIAH

Counsel for the Respondent No.2: GP FOR SOCIAL WELFARE

Counsel for the Respondent Nos.1 and 3: MR.VIJAYA BHASKAR MOOLA, STANDING COUNSEL FOR A.P.S.W. RESIDENTIAL SCHOOLS.

The Court made the following :

ORDER :

This Writ Petition has been filed seeking a direction to the respondents to regularize the services of the petitioner by continuing her in service in the respondent-school.

The petitioner was sponsored by the Employment Exchange for the post of Auxiliary Nurse-Mid Wife and got selected by the selection Commission headed by the District Collector, on 25-7-1989, who was the appointing authority at that point of time and also in-charge of the A.P. School Welfare Residential Educational Institutions Society. On earlier occasion the petitioner herein filed Writ Petition No.6000 of 1990 before this court seeking regularization of her services and this court by its order dated 24-6-1993 directed the respondent-Secretary, A.P. Social Welfare Residential Educational Institutions Society to treat the petitioner herein as regularly appointed employee. The relevant portion of the order reads thus :

> " In the above mentioned circumstances, there is no justification on the part of the respondents for not regularizing the services of the petitioner. Accordingly, the writ petition is allowed and the 1st respondent is directed to treat the petitioner as regularly appointed employee with effect from the date of appointment i.e. 25-7-1989."

It is also submitted that complaining that the respondents have disobeyed the orders passed by the learned single Judge of this court in Writ Petition No.6000 of 1990, the petitioner filed Contempt Case No.203 of 1994 and the same was disposed of by following directions:-

> "The learned Government Pleader submits that writ appeals have been filed questioning the said order. However, it is also brought to my notice that in similar writ appeals, interim orders subject to the following conditions.
>
> 1. Such of those employees belonging either to teaching or non-teaching staff who are in service as on today shall be continued in

service pending disposal of the writ appeal.

2. The Employees who are being continued in service shall be paid salaries on par with the regular employees with effect from 14.6.1993 pending disposal of the writ appeal.

3. It is open to the authorities to fill up all the existing vacancies other than the vacancies in which the respondents herein are being continued in accordance with the rules and regulations in force

4. The differential salary payable for the period from 14.6.1993 to 306.1993 and from the month of July, 1993 shall be paid to the respondents herein on or before 24.8.1993."

Thereafter, it is submitted that the respondents have preferred Writ Appeal No.1241 of 1995 against the order passed in W.P.No.6000 of 1993, dated 24-6-993. The stand of the respondents is that she has not completed the five years of service as on 25.11.1993 and that she does not fulfil the requisite qualification. The petitioner completed four years four months as on 25.11.1993. The fact that the petitioner was appointed on 25-7-1989, pursuant to the interview by the District Collector and Chairman of the District Social Welfare Residential Schools is not in dispute. The petitioner has been continuing in the service as on today, pursuant to the interim directions of this court whereby this court while admitting the writ petition by its order dated 12-12-1994 directed the respondents to continue the petitioner as on same terms and conditions as she is now working pending disposal of the writ petition. The respondents also stated in the counter that they 9have no intention to terminate the services of the petitioner pending disposal of the Writ Appeal No.1241 of 1995. Obviously, Writ Appeal No.1241 of 1995 was finally disposed of by the Division Bench of this Court. The relevant portion of the order reads as follows:

" Respondents-Appellants clear averment in their return in the Writ

Petition is that the Writ Petitioner-respondent was not recruited in accordance with the rules applicable to it. Thus, the clear stand before the Court on behalf of the appellants is that the writ petitioner-respondent has not been recruited in accordance with law. Courts have always been advised and taken care to avoid issuing a Mandamus or a direction to regularize any appointment in a service, which appointment has not been made in accordance with the prescribed procedure in this behalf. The reasons are not far to say that such appointments in exceptional cases may be found to go to a deserving person but invariably are made to give benefit to some near and dear or some one who has right connections at such level of power where law can be ignored and appointment as favour can be bestowed. The writ petitioner may have deserved the appointment and by giving to her only a daily wage and part time appointment injustice was done to her by the appellants. That, however, cannot be ascertained unless it is known that she qualifies and that she qualifies in competition with others, who also seek the appointment in the post which has been given to her. It is necessary for all conscientious people and the Courts cannot afford to give up the same to realize that if rule of law is not adhered to and arbitrary actions are sanctioned by the Orders of the Court, that too in the nature of Mandamus, the first casuality will be the promise of the Constitution of India that every person should get equal protection of law and enjoy equality before law. It is for the said reason that we have our reservations in approving the directions issued by the learned single judge. The same are fit to be set aside and they are accordingly set aside.

We, however, do not want to deny to the writ petitioner-respondent the benefits which she should receive provided she is qualified for the appointment and provided, if recruitment rules are applied for selection and she is found suitable. We are, in the circumstances as above inclined to order that the appellants shall consider the case of the writ petitioner-respondent and, in case she is found to fulfil all requisite qualifications, extend to her the regular appointment as contemplated in the Service rules. In doing so, the appellants shall take care of the period of service rendered by the writ petitioner-respondent and fix such cut-off date for regularization which is no manner causes prejudice to her interests.

With the directions as above, the appeal is allowed and the writ petition is dismissed. There shall be no order as to costs."

In view of the judgment of the Division Bench of the Court referred above, and in view of the fact that the petitioner was appointed way back in the year 1989 and she has been continuing in service pursuant to the orders passed by this court referred above, considering the totality of the circumstances of the case, the respondents are directed to consider the case of the petitioner for her regularization of services in accordance with the rules forthwith.

With the above directions, the writ petition is disposed of. No costs

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11-11-2004.

Kk/Hsd

Assistant Registrar

To,

1 The A.P.School Welfare Residential Institutions Society,
Regd.No.245386, Telugu Samkshema Bhavan , Masab Tank,
Hyderabad.
2 The Secretary,Govt., of A.P., ,
Social Welfare Department, Secretariat,
Hyderabad.
3 The Principal, A.P. Residential School for Girls,
Parkal, Warangal Dist.

4. 2 C.Cs to G.P. for Social Welfare, High Court Buildings, Hyderabad
(OUT)

5. 2 C.D. copies.